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CHARLES E. MORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 79

HARRY C. MOORE, as Treasurer of Grant County, Indiana

Petitioner

v.

SIDNEY Z. MITCHELL and NIEL A. WEATHERS (sued as NEIL A. WEATHERS), as Executors of the Last Will and Testament of RICHARD EDWARDS BREED, Deceased

Respondents

REPLY BRIEF FOR PETITIONER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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REPLYING ARGUMENT.

POINT I.

The authorities cited by the respondents are wholly insufficient to sustain their contentions.

The American cases cited by the respondents are all discussed in the brief for the petitioner. The inadequacy

of the authority is patent upon a consideration of its nature. The authorities cited are the following:

Two penalty cases:

Wisconsin v. *Pelican Insurance Co.*, 127 U. S. 265;
State of Arkansas v. *Bowen*, 20 D. of C. Rep. 291.

Three cases in which the question of extraterritorial enforcement was not involved:

Ashley v. *Ryan*, 153 U. S. 436, in which the question was purely extraterritorial imposition, not collection;
Heine v. *The Levee Commissioners*, 86 U. S. 655;
Rees v. *City of Watertown*, 86 U. S. 107.

A decision of the court whose decision is here for review, the pertinent portion of the opinion being dictum:

New York Trust Company v. *Island Oil & Transport Corporation*, 11 Fed. (2d) 698.

Two lower court decisions:

Matter of Anita Bliss, 121 Misc. 773;
State of Maryland v. *Turner*, 75 Misc. 9, in which the court stated that the questions presented were absolutely novel.

A false imprisonment case:

Henry v. *Sargeant*, 13 N. H. 321.

State of Colorado v. *Harbeck*, 232 N. Y. 71. Petitioner submits that the basis of this decision was that the tax was not validly imposed and that the decision is not logical otherwise. The decision was based upon a refusal of the court to apply the maxim *mobilia sequuntur personam*. As to the effect of *Blodgett* v. *Silberman*, 277 U. S. 1, upon the *Harbeck* decision, respondents make the point that the *Blodgett*

case did not deal at all with the problem of extraterritorial enforcement. This is unquestionable, but by its decision upon the maxim *mobilia sequuntur personam* this court has overturned the basis of the *Harbeck* decision. The conclusion to which the New York Court of Appeals would have come had it believed the tax to have been validly imposed is problematical. In the present case the *Blodgett* decision fixes the situs of the intangibles in respect of which the tax was levied.

The English cases cited by the respondents are the following:

In re Visser (1928), 1 Chan. 877. This case sustains the contention of the respondents but concedes that there is no direct previous authority except the case of *Municipal County of Sydney* v. *Bull.*

Municipal County of Sydney v. *Bull* [1909], 1 K. B. 7. The court was of the opinion that action could not be brought in one country to enforce the revenue laws of another country, but calls attention to the fact that the exact decision was that it was not the intent of the Australian statute, which authorized collection by suit, to authorize collection beyond the confines of the Colony, coupled with the fact that the action in question was a mixed action and therefore not transitory in nature.

The Attorney-General for Canada v. *William Schulze, & Co.*, 9 Scots Law Times Reports 4 (1901). This was a penalty action.

City of Regina v. *McVey*, 23 Ont. W. N. 32 (1922), is decided solely upon the authority of *Municipal County of Sydney* v. *Bull* without discussing the question involved.

The quotation in the respondent's brief constitutes the whole of the opinion.

Holman v. *Johnson*, 1 Cowper 341 (1775), was assumpsit for goods, sold and delivered in Holland, the seller knowing that the goods were to be smuggled into England, but having no connection with the smuggling except such knowledge. The decision was that the plaintiff's demand was not founded upon the ground of any immoral act or contract, and therefore was enforcible. The only question was whether the laws of Holland vitiated the contract. No question of extraterritorial enforcement arose or was considered.

The Emperor of Austria v. *Day and Kossuth* (1861), 3 De Gex, Fisher and Jones' Reports, 217, 241-242, was an appeal from a decree restraining the defendants from making notes purporting to be the notes of the Hungarian state. The case is absolutely dissimilar from the present case and the principles of the decision are entirely inapplicable. It is interesting to note that in the portion of the opinion referred to by the respondents the court said:

> "But, although from the comity of nations, the rule has been to pay respect to the laws of foreign countries, yet *for the general benefit of free trade*, 'revenue laws' have always been made the exception." (Italics ours.)

Huntington v. *Attrill* [1893], A. C. 150, was an action under a statute which the court construed as penal, a New York statute making officers of corporations who signed false certificates liable for debts of the corporation.

Cotton v. *Rex L. R.*, L. R. 1914, A. C. 176, held that the Quebec Succession Duties Act upon its true construction imposed no duty upon the transmission of movable property outside the Province—the decision being one of statu-

tory construction and involving only the question of imposition of duties on property outside the taxing jurisdiction, not the question of extraterritorial collection. The action was initiated in Quebec.

Indian & General Investment Trust, Ltd. v. *Borax Consolidated, Ltd.* [1920], 1 K. B. 539, 550. In this case the Tonopah & Tidewater Railroad Company, an American railroad corporation, undertook to pay interest on its bonds in London, the deed of trust providing that it should be construed and the rights of all parties thereunder regulated by the laws of England. The Railroad Company in making interest payment claimed to deduct the United States income tax. It was held that payment of such a deduction was not a discharge of the company's obligation. No question of the jurisdiction of the court or of the rights of the United States Government was involved.

In *The King of the Hellenes* v. *Bostrom*, The Law Journal, July 14, 1923, at page 306, the Greek Government claimed, by reason of certain legislation and executive decree, a certain cargo shipped from Greece. The court found that the Greek Government had no proprietary rights in the cargo, but that the legislative machinery gave the government part of the profits resulting from payment in foreign coin for the goods exported. The reporter says:

> "He (Mr. Justice ROWLATT) could not give the Greek Government a lien on the goods to enable them to levy the tax. The rights of the parties in respect of the proceeds of the goods is another question, and that apparently is still left open as a matter for further determination."

These authorities are totally inadequate to support such an important exception to the general rules of law and comity as that here claimed in behalf of the respondents.

POINT II.

There is no good reason why claims under revenue laws should not be enforced outside the taxing jurisdiction.

The respondents have introduced a triangle [Brief, Point I(c), p. 24] which appellant does not believe exists. Conceding, for the argument, that the *Harbeck* case would be controlling in the courts of the State of New York in the case of a tax validly imposed, the petitioner understands the decision in that case to go no further, at least, than to hold that the courts of the State of New York are not open for the enforcement of tax claims arising in other jurisdictions. No state policy of the State of New York closing the federal courts to such causes of action can exist. Whether or not the taxing statute is valid, and whether or not the procedure followed for assessment resulted in a valid assessment, are questions of law and not of policy. And the question of whether a resident of New York, or an estate being administered in the New York courts, should pay taxes justly due to another state or its municipal subdivisions, is not a question of the domestic economy of the State of New York but is entirely a private matter.

The examination referred to on page 24 of respondents' brief would create no difficulty or embarrassment. Always, where the cause of action arises under the laws of another jurisdiction, it is necessary to determine whether the law which gives rise to such cause of action

is valid, whether the facts of the particular case bring it within the purview of that law, and whether such cause of action runs counter to the settled public policy of the trial jurisdiction. The objections raised by the respondents could be urged with equal force in an action to recover damages for personal injuries suffered in another State. The courts have shown no disposition to shirk the necessary inquiry. But, as stated by Judge LEARNED HAND, the inquiry "is not a troublesome or delicate inquiry where the question arises between private persons." The only inquiry in the case at bar on the point of policy would be whether the cause of action conflicted with some settled policy of the national government. The State of New York is not concerned. A policy of the state, closing its courts in a similar case, would be wholly immaterial. The necessity for the classification suggested by respondents is not apparent. Taxation certainly meets with the approval of the federal government. The federal courts have expressed no disapproval, so far as the petitioner is aware, of any particular form of taxation in force in any of the states, so long as such taxation is within constitutional limits. It is unnecessary that the federal government shall have adopted a tax of the particular form under which the asserted obligation arises. It is only necessary that the cause of action shall not "run counter to the 'settled public policy' " of the federal government. Therefore, the inquiry, where enforcement is sought of an obligation arising under the revenue laws of another jurisdiction, is simple, and is neither troublesome nor delicate.

The difficulties foreseen by Judge LEARNED HAND are advanced by him as original ideas in respect of the exception claimed to the general rule of law. They have no

support in previous decisions. The cases cited in the respondents' brief are all based upon supposed prior authority, or on reasons entirely different from those now urged in support of the alleged exception, such as "the general benefit of free trade." The reasons now urged and asserted for the first time in the case at bar are wholly insufficient to support the alleged exception.

If such unfortunate difficulties in determining whether or not to pay valid taxes should arise, as set forth on page 26 of the respondents' brief, such difficulties would be entirely the result of tax evasion. Had the decedent discharged his valid tax obligations there would be no questions for representatives of his estate to solve. Is there any hardship in passing on to one's personal representatives the question, which the decedent had to solve in his lifetime, of whether or not to pay the taxes which had accrued against him? The flood of actions threatened on page 25 of the respondents' brief but emphasizes the necessity for relief. If successful tax evasion is so prevalent as there intimated, should there be no relief? Relief, not from negligence on the part of the tax officials (despite the allegation of lack of diligence on page 25 of the respondents' brief, the complaint alleges that prior to Breed's death the tax officials had no knowledge of the facts on which the tax obligation is based), but relief against tax evasion which, except for such relief as is here demanded, will be entirely successful.

CONCLUSION.

The authorities furnish no sufficient support for the exception to the general rule of law here contended for, nor do the reasons advanced furnish any satisfactory basis for such exception. Satisfactory previous authority being lacking, it is open to this Court, unhampered by authority, to pronounce and establish the rule of law which it deems proper. Petitioner urges and submits that municipal corporations having just and valid claims under revenue laws should be afforded a method of collecting their revenues. The doors should not be closed in their faces for the benefit of tax evaders.

The judgment of the Circuit Court of Appeals should be reversed.

Respectfully submitted,

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